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BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN RE: ILLINOIS BELL TELEPHONE COMPANY,)
D/B/A AT&T ILLINOIS D/B/A)
AT&T WHOLESALE AND SPRINT COM,)
INC, WIRELESSCO.LP, NPCR,INC.) No. 13-0443
D/B/A NEXTEL PARTNERS)
AND NEXTEL WEST CORP)
)
)
JOINT PETITION REGARDING APPROVAL)
OF INTERCONNECTION AGREEMENT)
pursuant to 47 U.S.C. § 252.

CHICAGO, ILLINOIS
July 31, 2013

Met, pursuant to adjournment at 11:30 a.m.

BEFORE: MS. KATINA H. BAKER
ADMINISTRATIVE LAW JUDGE

MIDWEST LITIGATION SERVICES, by Gwen Bedford, CSR
License No. 084-003700

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9 Appearing on behalf of the Illinois Commerce
10 Commission.

11

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19 Appearing on behalf of Sprintcom Wireless Company
20 and Illinois Bell

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1 APPEARANCES: (CONTINUED)

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9 Appearing on behalf of Level 3, Peerless and TW Telecom
10 appeared Pro Se

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1 JUDGE BAKER: Pursuant to the authority of
2 the Illinois Commerce Commission, I now call Docket
3 13-0443, Illinois Bell Telephone Company, d/b/a AT&T
4 Illinois, d/b/a AT&T Wholesale and Sprint Com, Inc.
5 Wireless Comp, LPNPCR, Inc. D/B/A and Nextel Partners
6 and Nextel West Corporation. This is the joint
7 petition regarding approval of an interconnection
8 agreement.

9 Would the parties please state their
10 names for the record?

11 MR. HUTTENHOWER: James Huttenhower,
12 H-U-T-T-E-N-H-O-W-E-R appearing on behalf of Illinois
13 Bell Telephone, 225 West Randolph Street, Suite 25D,
14 Chicago, Illinois 60606.

15 MR. FRIEDMAN: Also on behalf of Illinois
16 Bell, Dennis Friedman, F-R-I-E-D-M-A-N, Mayer Brown, 71
17 South Wacker, Chicago, Illinois 60606.

18 MR. KELLY: Henry Kelly, with Kelley Drye &
19 Warren, 333 West Wacker, Chicago, Illinois 60606,
20 appearing on behalf of Level 3 Communications, Peerless
21 Network of Illinois and TW Telecom of Illinois.

22 MR. HARVEY: For the Staff of the Illinois

1 Commerce Commission, Matthew L. Harvey, 160 North
2 LaSalle Street, Suite C-800, Chicago, Illinois 60601,
3 312-793-3243.

4 MR. SCHIFMAN: And on behalf of the Sprint
5 Companies, Ken Schifman, S-C-H-I-F-M-A-N, 6450 Sprint
6 Parkway, Overland Park, Kansas 66251. I request
7 permission under the Illinois Rules of Practice as an
8 out of state attorney.

9 JUDGE BAKER: Permission granted. I guess
10 the first thing we need to discuss is Level 3's
11 Petition to Intervene.

12 MR. KELLY: And Motion for Leave to file
13 comments which were attached to the motion.

14 JUDGE BAKER: Well, I had an opportunity
15 obviously to read all of the briefs that were filed on
16 this, and the petition is going to be denied and
17 therefore the comments as well.

18 MR. KELLY: Okay. Can I ask the reasons?

19 JUDGE BAKER: And I'm denying it solely based
20 on the reason that I just didn't see the standing for
21 it. I mean based on what I read, I didn't see it. So
22 if you would like to add something, you have that

1 opportunity now.

2 MR. KELLY: Your Honor, carriers have an
3 opportunity to opt in to interconnection agreements
4 approved by the Illinois Commerce Commission. It's
5 important that carriers have a voice, not just the
6 arbitrators, parties that are arbitrating proceedings,
7 but that other carriers that have an opportunity to opt
8 into those proceedings or opt into those agreements
9 under federal law have an opportunity to present views
10 to the Commission on whether the arbitration agreements
11 comply with Section 251 and 252 of the Federal
12 Communications Act.

13 It's our view that the agreement that is
14 being proposed to the Commission doesn't comply with
15 federal law, does not comply with Section 251, does not
16 comply with Section 252 of the Federal Communications
17 Act. And the Commission needs to be aware of that,
18 needs to be informed of that. I think that the Level 3
19 TW Telecom and Peerless's comments need to -- are
20 intended to bring that information to the Commission.

21 Each of those carriers are affected by a
22 decision by the Illinois Commerce Commission that

1 doesn't respect the federal interconnection
2 requirements. And for that reason, the parties have
3 a -- the intervenors have an interest in the
4 proceedings and their petition to intervene should be
5 granted.

6 MR. FRIEDMAN: I'll briefly respond, because
7 Mr. Kelly just mentioned for the first time the
8 Petitioner didn't mention in their papers an opt in.
9 And it is correct that under the Telecommunications Act
10 of 1996 a carrier, including Mr. Kelly's client, can
11 opt in and adopt as its own an interconnection
12 agreement that the Commission has approved.

13 I guess what Mr. Kelly is saying is that
14 the Petitioners would like for this agreement to be to
15 their liking so that they might opt into it. But this
16 is a wireless interconnection agreement. Sprint is a
17 wireless company. Mr. Kelly's clients are not ever
18 going to opt into Sprint's agreement. And even if they
19 were, that wouldn't give them standing. The argument
20 is very, very tenuous. There are dozens and dozens of
21 interconnection agreements in Illinois. Perhaps this
22 will be just one more that they want to opt in to

1 negotiate their own. And when they do, nothing that
2 was decided in this case is going to impede them from
3 imposing whatever they want.

4 MR. SCHIFMAN: Your Honor, this is Ken
5 Schifman from Sprint also. Two things, one, the
6 Illinois rules and Part 762 due specifically allow
7 parties other than the parties who are part of the
8 arbitration to file comments regarding the outcome of
9 the arbitration decision. And as Mr. Kelly said to
10 give comments on whether or not the interconnection
11 agreement that the Commission is being sought to
12 approve whether it complies with the requirements of
13 Section 251 and 252 of the Act. So Part 762 of the
14 Illinois Rules specifically allow for the type of
15 comments that Mr. Kelly's clients are seeking to
16 provide.

17 This second thing is in response to what
18 Mr. Friedman said. The Illinois Court of Appeals
19 specifically approved an agreement between when Sprint
20 was seeking with AT&T Illinois to port an agreement
21 from another company, from another one of their
22 companies to Illinois. AT&T in that case argued that

1 hey, you can't -- a wireless and the wire line
2 companies of Sprint can't port that agreement from the
3 AT&T BellSouth areas. And the Court of Appeals upheld
4 the Commission's decision on that saying that yeah, it
5 doesn't matter if it's a wireless or wire line
6 agreement, Sprint is the telecom carrier and it's
7 seeking its rights as a telecommunications carrier, not
8 specifically a wireless carrier.

9 I don't think the point that
10 Mr. Friedman there makes any difference whatsoever from
11 an opt in perspective.

12 MR. FRIEDMAN: I guess I'll quickly reply.
13 Don't be confused by those last comments, because they
14 have nothing to do with what we're talking about. What
15 Mr. Schiffman was talking about involves not opting in,
16 but when AT&T merged with SBC, there was a condition
17 that said the carriers could port BellSouth, could port
18 agreements in Illinois and from other states. Porting
19 is a whole different animal from opt ins. There was
20 nothing that was said in that case that refutes what I
21 said here which is that there is simply no way in the
22 world that Mr. Kelly's clients here is going to adopt

1 as its own a wireless interconnection agreement.

2 MR. KELLY: One, I don't know that that's
3 true because there are simply terms and conditions for
4 interconnection that any carrier could take advantage
5 of in the interconnection agreement. Just because
6 there is an interconnection agreement doesn't mean that
7 the carrier opting into that agreement has to take
8 advantage of every single term and condition that has
9 been in that agreement. Parties can take advantage of
10 part of the terms and conditions of the agreements for
11 interconnection, for example. They don't have to
12 necessarily take advantage of other terms that might
13 relate to wireless provisional services.

14 But, your Honor, I think the most
15 important thing is in 1996 when the Commission adopted
16 Part 762, the Commission specifically said that
17 interested carriers, and I'm quoting, "have the
18 opportunity to participate under the proposed Part 762
19 which allows intervention in a proceeding for approval
20 of agreements adopted by arbitration."

21 I don't know -- I don't understand how
22 your Honor could deny intervention to allow comments to

1 be submitted when the Commission's order approving 762
2 said that carriers have the opportunity to participate
3 in these proceedings. I just don't know how any party,
4 if you could deny our petition to intervene, I'm not
5 sure there ever could be a circumstance where an
6 interested carrier could intervene in a proceeding to
7 submit comments if we're not allowed to participate in
8 this instance.

9 MR. FRIEDMAN: Once upon a time there was a
10 FCC rule that did say that if a carrier wanted to adopt
11 or opt in to an interconnection, he could opt in part
12 of it that was called the "pick and choose" rule.

13 MR. KELLY: That is not what I'm suggesting.
14 I'm arguing against that.

15 MR. FRIEDMAN: That rule changed some years
16 ago to what is called the "all or nothing rule". And
17 if Mr. Kelly, one of Mr. Kelly's clients wanted to opt
18 into the Sprint agreement, it would have to take the
19 whole agreement and that would be its entire
20 interconnection agreement.

21 Now, it is correct that they wouldn't
22 have to avail themselves of everything that is in their

1 agreement. For example, there could be resale
2 agreements. Maybe they don't want to do resale. But
3 the interconnection arrangements in this particular
4 agreement are suited only to a wireless carrier. And
5 in fact, I'll say right now, if you want to hear it,
6 your clients to have this agreement, they can have it
7 and they won't be able to conduct business.

8 As for Mr. Kelly -- as for the other
9 point, how can you deny intervention, the Commission
10 never said that all carriers can intervene no matter
11 what. There is a rule that says that the Petitioner
12 has to provide a concise statement of its interest.
13 Now, they did that. And of course our beef was not
14 that they didn't satisfy that kind of pleading rule.
15 They provide a concise statement of their interest.
16 The interest is insufficient. There wouldn't be a rule
17 that says you have to provide a concise statement of
18 your interest unless you had to have an interest. And
19 the interest is as discussed in the Illinois cases that
20 we have cited in our brief.

21 JUDGE BAKER: Well, I think based on what was
22 written and everything said today it still stands. I'm

1 going to deny the intervention. I just don't see it.

2 MR. KELLY: Does Staff have a position?

3 MR. HARVEY: Staff has no position on the
4 question of party's right to intervene. We were
5 planning to file comments. Apparently, we -- that wish
6 has been overtaken by events. So we will not do that,
7 except insofar as we will file a verified statement.

8 JUDGE BAKER: Okay. Thank you. Anything
9 further regarding --

10 MR. FRIEDMAN: I don't know that we have
11 anything else.

12 MR. HUTTENHOWER: Since Matt and I are here,
13 if you want to talk about scheduling a hearing on that.
14 We could, but you don't have to.

15 JUDGE BAKER: Why don't we do that now?

16 MR. HARVEY: Your Honor, I'll make a motion.
17 I will submit our verified statement with a motion to
18 admit without hearing. Obviously, you could deny that
19 or grant it as you see fit. But I will, as I say,
20 submit our verified statement in that manner. And I
21 suppose people have a right to take a pot shot at that
22 if they want to.

1 JUDGE BAKER: Okay.

2 MR. HUTTENHOWER: Fine with me.

3 MR. SCHIFMAN: This is Ken Schifman from
4 Sprint. So you are talking about the verified
5 statement in support of the agreement saying that it
6 doesn't contradict the terms of the Act and that type
7 of thing?

8 MR. HARVEY: It would be pretty plain
9 vanilla. Although in the past when we've submitted
10 verified statements in support of arbitrated
11 agreements, one of the decisional criteria has been
12 whether it appears on its face to comply with the
13 Commission order, the Commission's arbitration award
14 underlying the agreement. I think the parties here can
15 see that it does. So that shouldn't be controversial.
16 But that would be the one, I think, wrinkle in the
17 thing that would be -- probably haven't seen very
18 often.

19 MR. FRIEDMAN: The wrinkle would be that you
20 wouldn't say that?

21 MR. HARVEY: No, we would merely point out
22 that in our view it appeared to comply with the --

1 JUDGE BAKER: The verified statement.

2 MR. HARVEY: -- the verified statement --

3 MR. FRIEDMAN: The agreement appeared to
4 comply with the arbitration.

5 MR. HARVEY: Yeah. As I say, I think since
6 the parties agreed that's the case, it's probably not
7 an issue in controversy at this point, but that's been
8 our practice in the past.

9 MR. SCHIFMAN: Of course Sprint has issues
10 with whether or not the arbitration decision conforms
11 with the requirement of the Act. And we'll reserve all
12 of our rights for appeal on that. But you are talking
13 specifically about whether or not the agreement matches
14 the arbitration decision, right?

15 MR. HARVEY: Whether it complies with the
16 arbitration decision does not discriminate against the
17 carrier, you know, not party to the agreement, and is
18 not contrary to the public interest, whatever those --

19 JUDGE BAKER: It's all the boilerplate --

20 MR. HARVEY: Yeah, the boilerplate. I'm
21 ashamed that I can't recite them from memory being 17
22 years out.

1 MR. FRIEDMAN: I guess in the interest of
2 maybe avoiding a filing that I would just assume not
3 have to bother with, I would point out the joint
4 petition that we filed, you know, already says each
5 party reserves all of its rights to appeal or otherwise
6 contest the arbitrated language. So I think you have
7 done that. I think we have done that. I don't know
8 that we have to do it again.

9 MR. SCHIFMAN: I'm not suggesting that we
10 have to file anything in the addition.

11 MR. FRIEDMAN: Okay.

12 JUDGE BAKER: Anything further?

13 MR. HUTTENHOWER: Nothing from Illinois Bell.

14 MR. SCHIFMAN: Are we going to schedule the
15 hearing or we just wait for an order on that?

16 MR. HARVEY: Well, it was my thinking, Ken,
17 that we would -- I was going to file a -- Mr. Omoniyi's
18 verified statement to the effect that I've just
19 described along with a motion recommending or
20 requesting that it be admitted into evidence without
21 hearing.

22 MR. SCHIFMAN: Okay.

1 JUDGE BAKER: No hearing.

2 MR. SCHIFMAN: I thought I heard Judge Baker
3 respond to that. Maybe I didn't.

4 JUDGE BAKER: Well, I don't have a problem
5 with that.

6 MR. SCHIFMAN: Okay.

7 JUDGE BAKER: So if that's how everybody
8 wants to proceed, that's how we're going to proceed.
9 The hearing will be waived and the verified statement
10 will be to follow.

11 When are you guys getting the verified
12 statement?

13 MR. HARVEY: I wish I could tell you today.
14 Certainly no later than tomorrow.

15 MR. HUTTENHOWER: Look at the Commission's
16 calendar. Looks like mid August would be like the 13th
17 and 14th.

18 JUDGE BAKER: It has to go on. And this
19 actually isn't -- when you count the days, that is not
20 correct either, the deadline date. But that's neither
21 here nor there. It can go.

22 MR. HARVEY: We'll get that on file very

1 directly.

2 JUDGE BAKER: Anything further?

3 MR. FRIEDMAN: No thank you.

4 MR. SCHIFMAN: Nothing from Sprint.

5 MR. HARVEY: Nor from Staff, your Honor.

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7 (WHEREUPON the hearing was

8 adjourned at 11:57 a.m.)

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